



off the trailer and I kind of did the splits and I fell back to my left and there was a mud flap there, kind of grabbed ahold of and then my back kind of bumped the tires on the back of the trailer itself, but when I did the splits with my legs is when I injured my back.

3. The Judge had the opportunity to observe Mr. Harding testify and assess his demeanor and credibility. In this instance, the Board, giving some deference to the Judge's implied finding of credibility, is also persuaded by Mr. Harding's testimony and finds that the incident occurred as he described it.

#### **CONCLUSIONS OF LAW**

1. An injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.<sup>2</sup>

2. For preliminary hearing purposes, Mr. Harding has established that he either aggravated or injured his back while working for Elko Construction on or about January 29, 1999. Therefore, he is entitled to receive workers compensation benefits for that accident.

3. As provided by the act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Appeals Board affirms the April 14, 1999 preliminary hearing Order entered by Judge Steven J. Howard.

#### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1999.

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BOARD MEMBER

c: Kathleen J. Cossairt, Olathe, KS  
Daniel N. Allmayer, Olathe, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>3</sup> K.S.A. 1998 Supp. 44-534a(a)(2).